G. R. S. 58]

Previous references.

~~191~~ 1898-99
(Courts)

File No. 74 of 98-99

Serial Nos. 1-9

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-9

Major Part B for October 01.

SUBJECT.

Extradition warrant for the Surrender of one Subraya bin Shivappa Hegde Chenow for dishonestly retaining Stolen property.

---

1 From the 1st Asst. to the Resident in Mysore, Dy no: 9.208. No: 3985/278-98 of 12/5/1898.

Forwards a copy of letter no: 3660 of 30th ultimo from the Dt. Magte of Kanara reporting the arrest and subsequent release on bail of one Subraya bin Shivappa for dishonestly retaining Stolen property

2. To the Govt. Tovocal No: 2465/9261 of 22/8/19

Forwards a copy of 1st Asst to the Resident letter no: 3985/278-98 dated 12/5/98.

GPB—3,500—21-7-14

3. From the Govt. Advocate,
Dy. no: 1648. no: 31 of 23/8/98.
Submits opinion in reply in jurisdiction to try a certain case of dishonestly retaining stolen property.

4. To the first Asst. to the Resident in Mysore.
no: 3818/7425 of 17/9/98.
Replies to letter no: 3985/278-98 of 12th ultimo that the Durbar are of opinion that no proceedings can be taken against the accused in the Mysore Criminal Court for the offence referred to.

5. From the 7. A. Resident in Mysore.
Dy. no: 5522. no: 10 of 4/1/99.
Requests to state whether the property seized in the house of Subraya bin Shivappa Hegde thenew of Sorab Taluk maybe returned to the claimant Manjappa Gundappa Hegde of Siddapur Taluk.

6. To the Dt. Magte of Shimoga.
no: 8018/7895 of 9/1/99.
Requests to be informed after making necessary enquiries whether the property maybe returned to the claimant Manjappa Gundappa Hegde of Siddapur Taluk.

7. From the Dt Magte of Shimoga.
Dy. no: 6770. no: 603/43 of 6/2/99
States that the property claimed by Manjappa Gundappa may be returned to him.

Note

Coming after a number of conflicting decisions, R v Murugasetty (I.L.R. Bom 338) settled the question, ruling that the theft etc should have taken place within British India to constitute the ~~goods~~ things stolen property. To obviate this defect Act VIII of 1882 amending the Section was passed.

Vide also Haines Commentaries I.P.C under S. 410 and Prince Crim. Proc. Code. Under S. 480

If we give the language Section, the same interpretation, the circumstances stated would not constitute any offence.

The Govt. advocate may be consulted on this point if he

There is nothing on the Record plainly pointing out where the arrest of Subraya Tok place. Reading the order of the Kanara Magistrate (a translation is appended) and the deposition of witnesses 6, 7, 9 & 10 for prosecution, we are led to conclude that the arrest was made by the police officers of H. M. Service Suo motu at Honavar within the Bombay Territories, after ~~his~~ leaving his house and taking possession of some property alleged to be stolen. The prisoner was removed by them the same evening to Honpali within their jurisdiction, the police patel of the village of Honavar being a consenting party to the removal.

Submitted for orders

Lih.
18-9-98

(counsel heard
Advocate-
Visit of protection
please issue at
once
21/9/98

Whether the "offence" obtaining stolen property can be maintained against the Accd. in a Mysore Court is the question for consideration.

S. 411 of the I. P. C., as in force in Mysore, makes the dishonest receipt or retention of "stolen property" with guilty knowledge punishable.

S. 410, "Stolen property" is defined as property the possession whereof has been transferred by theft, etc. As the amendment of the Code enacted by Act VIII of 1908 has not been adopted in the Courts in Mysore, there seems no escape from the conclusion that the property obtained by theft committed in British India is not stolen property according to the law of Mysore.

This is becoming clear with the legislation but a case with the ready in a recent

S. 180 of the Criminal Pro: Code presupposes that the act in question is an "offence," i.e. an act made punishable under the Penal Code as in force in Mysore, which the Accd's act in the present case is not. Hence that section is inapplicable.

The Penal Code as in force in Mysore is, I think, from a strictly legal point of view, a different law from the Penal Code as in force in B. India though it had its origin in the "introduction" of the latter into the territories of Mysore under orders of the Govt. of India in 1862

26/8/98.

I am of opinion - The facts of the case has not taken a correct view of the case. The Accused cannot be tried in Mysore for the offence for which he is charged before me. 27/8/98.

The accused says a reply may be sent - accdg. to Govt. Order - on submitting Draft - to him 12-9-98.

J 208

8L 110.

No. 3985. Encl 2 fols

278.98

FROM

THE FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore.

SECTION 615

FILE No. 74 of 98-99

SERIAL No. 1

Dated Bangalore, 12th August 1898.

SIR,

I am directed to forward for the information of the Durbar a copy of letter No.3660, dated the 30th ultimo, from the District Magistrate of Kanara, together with its enclosures, in original, reporting the arrest and subsequent release on bail of Subraya bin Shivappa Hegde Chendu, who is accused of having committed the offence of dishonestly retaining stolen property under section 411 of the Indian Penal Code.

2. In the circumstances set forth in the Kanara District Magistrate's letter, the Resident enquires whether the Durbar consider that the accused can be ~~heard~~ tried in Mysore and if so whether they desire his surrender should be still in Canara, and if so, I am to request that early application may be made to this office for warrant under the Extradition Act, specifying the name of the officer to whom, and the place at which the accused person should be surrendered.

3. This enquiry is made with special reference to the doubt whether property stolen in

British

British India, can, as the Durbar have not adopted the amendment made in 1882 to section 410 of the Indian Penal Code, be treated as stolen property in Mysore. This is wrong

I have the honor to be

Sir,

Your most obedient servant

K. D Erskine Captain,

First Assistant Resident.

Letter No 3660 Dated the 30th July 1898 from the District Magistrate, Kanara to the First Assistant to the Resident in Mysore.

encls. re to sl. 1.

I have the honor to forward herewith the proceedings recorded by the First Class Magistrate of Sirsi in this District together with those recorded by the Second Class Magistrate of Siddapur in the Case of Imperatrix Versus Subraya bin Shivappa Hegde Chendu, an inhabitant of Harishe in the Sorab Taluka of the Mysore State, in which he was Charged by the Police for offences punishable under Sections 457 and 380 Indian Penal Code and to state as follows:—

broke & house [illegible]

Th[illegible] in a house

2. The shop of one Manjappa Ganapa Hegde of Tyagli in Siddapur Taluka of this District was broken into and piece goods valued at Rs 838/- were stolen on the night of the 26th January 1898. Some of the stolen property, Viz, two bundles of clothes were traced by the Kanara

Police

Police to the accused, they being found concealed in the granary on the upper storey of the accused's house on 23rd April last. A panchnama was drawn up; and the accused having been arrested was brought to Kanara along with the property seized, and sent up for trial before the Second Class Magistrate of Siddapur. The First Class Magistrate of Sirsi to whom the case was transfered and who recorded evidence for the prosecution, reports that no case under sections 457 and 380 Indian Penal Code has been made out and adds that the facts adduced go to connect the accused with the offence of dishonestly retaining stolen property punishable under section 411 Indian Penal Code. The Magistrate is also of opinion that he has no local jurisdiction to take cognizance of this offence as it was committed out of British India by the accused, who is a Foreign subject being an inhabitant of the Mysore State. He has therefore discharged the accused

and

and having rearrested him under section 15 of the Foreign jurisdiction and Extradition Act XXI of 1879 with a view to further steps being taken against him by the Mysore Darbar, has released him on bail. I approve the Magistrate's proceedings and Consider that since the Crime alleged to have been Committed by the accused, viz, retaining stolen property was done in the Mysore State and since that state is not a part of British India (Vide section 15 Indian Penal Code) the said Crime is not an offence as defined in section 40 idem, and therefore section 180 Criminal Procedure Code does not apply. I have therefore the honor to Certify that there is a prima facie Case against the accused and that he should in my opinion be tried in the Mysore state.

Place of trial in abetment &c

?

3 I shall be obliged by your informing me what steps you have taken in the matter, and on receipt of your reply I shall arrange to forwar

ward
the property produced in the case.

Copy

Henry Clarke

Registrar

1836

Camp Simla

Dated 4th July 1898.

The accused and the property in respect of which the offence was committed are before the Court.

The Vakeel for the accused is also present.

The Police have charged the accused under sections 457 & 380 of the I. Penal Code, but from the enquiry made into the case, the Court finds that the offence falls under section 411 of the I. Penal Code (dishonestly receiving stolen property, knowing it to be stolen). Next, to proceed with the case under the section referred to the Court finds that it has no jurisdiction since the residence of the accused, his arrest, commission of the offence & the confiscation of the property found with him by the Police, are all

exceeds Sl. 1

to the Mysore Province.

Again, considering that it would be unlawful to detain the accused in custody since, the Court has ordered his release on a bail bond for Rs 200.

All the proceedings of the case should be forwarded to the D'Range of Kanara with a request to take immediate steps to inform the matter to the Authorities in Mysore.

Lastly if the Mysore Durbar desire to proceed with the case against the said the property in respect of which the offence was committed, should be entrusted to those the same.

The order was read and recorded.

As the accused paid Rs 200 & produced a Security, his release on bail was ordered. The bail bond is with the records.

Summons &c nine in No
are also attached.

(Signed) illegible.

Magte 1st Class.
Sinai.

Enc

8C. 2

Copies
Secretariat
Lib
22/8/98

SECTION 8C
FILE No. 74 of 98-99
SERIAL No. 2

To
The Govt Advocate

No: 2465 J 22-8-98
J261 Secret files

Have the honor to
forward copy of
Trincomalee Agent's Resident's
letter No 3985- J
278-98
12th August 98 with its
enclosures in the
action to be taken
by the Durbar against
one Tellavaya bin Ski-
-rabba who encroached
in upon one Mapa
of Uroperty & stolen
die Boriahi Kerriton
and to request that
the Govt Advocate

11

Mr. Madison's
with Mr. Jefferson's Gout
Note and observations
the question raised, as
stated by Mr. Jefferson

4
22/1799

J 260

OFFICE OF THE 1898
From 1648
24-8-98
The Govt. Advocate.

To
The Secretary to the Govt. of Mysore,
Rev. and Gen. Depts.

SECTION No. 5
FILE No. 74 (7 Jan 97)
SERIAL No. 2

Dated 23d August 98
Despatched
Received 24
General No. 31.
No.

Enclosure No. 1 file

Subject Opinion re jurisdiction to try a certain case of dishonestly retaining stolen property &c

---

References to be marked.
Refer put up
MMB
25/8/98
Subject Subject Sheet
Ld.
25/8/98

No 31. dated 23rd Aug: 98

From The Government Advocate

To The Secretary to the Govt: of Mysore

General and Revenew Department

Sir

In reply to your letter No 2465/261 dated 22nd instant, I have the honor to state that, under section 180 of Criminal Procedure Code illustration B, a charge of receiving or retaining stolen goods may be enquired into or tried either by the Court within the Local Limits of whose jurisdiction the goods were stolen or by any Court within the Local Limits of whose jurisdiction any of them were at any time dishonestly received or retained

This clause grants what the Recs act-ually includes Section of it in hopes of adding the criminal Courts of Mysore -

The ruling reported in page 523 of the Indian Law Reports IX Allahabad supports the view of the District Magistrate of Kanara

This negatives the jurisdiction obtained by Courts to try persons found in a native State with goods stolen in British India.

The offence of retaining stolen property in the case under reference may, under provisions of section 180 illustration B be tried by any Magistrate having jurisdiction in the District of Shivamoga

It has first to be shown that the Receiver-constitutes an offence

and as the Magistrate who tried the case is of opinion that the facts adduced go to connect the accused with the offence of dishonestly retaining stolen property, The District Magistrate of Shimoga may apply for a warrant under the extradition act.

I am of opinion that the introduction of the amendment act to Section 410 of the Indian Penal Code to the Mysore Province is not necessary to give jurisdiction to Magistrates in Mysore to try the offences of retaining property stolen in British India as under section 180 illustration B the Magistrate of the place where the stolen property had been detained has jurisdiction irrespective of the place where the property was stolen.

It was not "stolen property" as defined in S. 410 of the Indian Penal Code

The ruling of the Bombay High Court reported in page 338 of the V volume of the Indian Law Reports Bombay series led to the amendment of sections 410 of the Indian Penal Code. The ruling refers to the word "offence" in section 410 as it stood before the amendment. Under that ruling the offence of receiving property

Stolen beyond the British Territories may be tried

in British India, if the Penal Code were in force

in the place where the property was stolen.

The enclosures are herewith returned

I have the honor to be

Sir

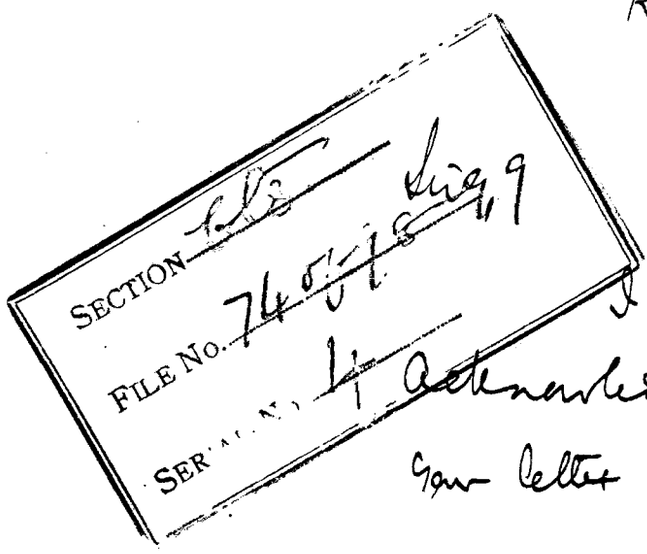
Your most obedient Servant

S Ramaswamier

Government Advocate

No: 3818/J425 dt 17-9-98
Enc 2 files.

To
The First Asstt Secy
Govt in Mysore



I am directed to acknowledge the receipt of your letter no. 3905/2705 dt 15 inst enquiring whether the Sahukar are in a position to apply for the extradition of one Subraya bin Shivappa Heggadendu, who is accused of the offence of dishonestly receiving stolen property under S. 411 of the I.P.C.

2. In reply I am to say that, in the absence of a definition of "stolen property" such as that ~~contained~~ enacted by Sec. VIII of Act 2 in British India the Sahukar are ~~barred~~ of foreign that no proceedings can be taken against the Accd in a Mysore criminal Court for the offence referred to.

3.

17

3. The Darbar are, however, fully conscious of the necessity for ~~making a similar~~ amendment of ~~the~~ S. 410 of the Penal Code as in force in Mysore ~~etc~~ in a similar manner. A general revision of the Penal & Criminal Procedure Codes of the State ~~is being made~~ on the lines of the corresponding enactments of British India ~~is being~~ has been undertaken in the Legislative Dept. and has ~~been~~ made considerable progress and ~~the~~ the necessary draft Replies will, I am to add, be submitted as early as possible for the approval of the Govt. of India.

I have &c.

14/9/98

Secy

To Copy to Leg. Dept. for information.

I understand

14/9/98

Copy sent
14-9-98
SK

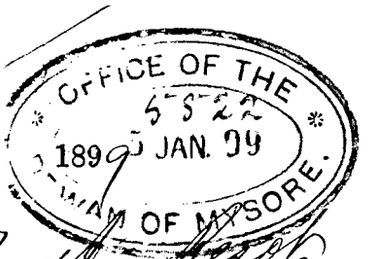
I do not think we need wait very long after 14-9-98

Sd/ By

4 - The original enclosures forwarded with Gov letter are herewith returned.

14-9-98

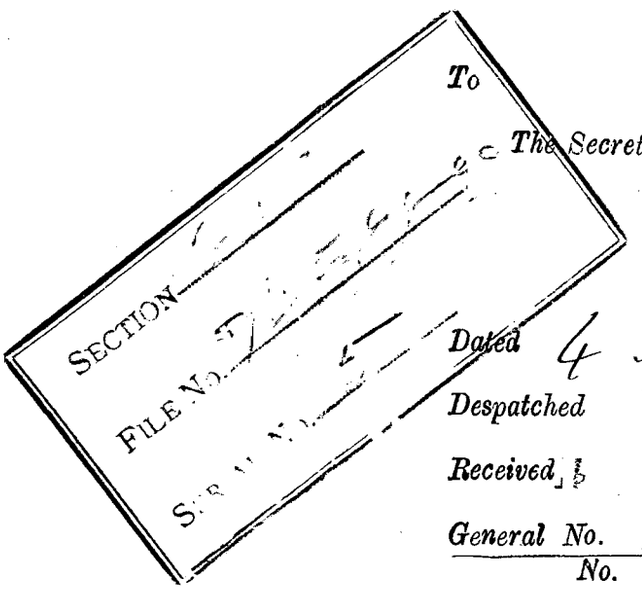
Pol 846



From Re 7 ... Nov 1799
in Mysore

To

The Secretary to the Govt. of Mysore,
Rev. and Gen. Depts.



Dated 4.1.99
Despatched
Received
General No. 10.
No.

Enclosure No. Recd

Re the property seized in the house of Subrayabeir Sivappa Hegade Chendr of Sarab Taluk.

Ref

References to be marked.

Ref to
Con
6/1. References picked up

7-1-99

24

No. 10 with proceedings.

Rec'd 11th Jan 1899

FROM

THE FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore

Dated Bangalore, 4th January 1899.

SIR,

With reference to the correspondence ending with your letter no: 3818/J 425 of the 17th September last, I am directed to request that you will be so good as to state whether the property, solely consisting of piece goods valued at about Rs 211-14 seized in the house of Subraya bin Sivappa Hegdé Chendu of Sorab Taluk may be returned to the claimant Manjappa Ganappa Hegdé of Siddapur Taluk as the former has not claimed it, whereas the latter has identified and fairly

prove

2D

proved it to be his own as will appear from the proceedings in the Case* sent herewith

* Sirsi 1st Class Magistrates Case no: 37/1898 and Siddapur II Class Magistrate Case no: 19/1898 (to be kindly returned)

2. As the property in question is liable to speedy destruction and deterioration of quality in course of time, the favour of an early reply is requested.

I have the honor to be,
Sir,
Your most obedient Servant

K. Eskine Captain
First Assistant Resident

M.

Very urgent

I have to say
No, Q—1—99
The District may be
of Shimoga.

Dated 9th January 1899.

No 8018/1895 Encl + 1 file

In forwarding herewith copy of letter No
10 dated the 4th instant
from the 1st Assistant
to the Resident in Mysore
~~forwarding the enclosure~~ & the
Ver. P.R.O. (original) thereunto
× (to be kindly returned) received, has the honor
to request to be
informed after
making the necessary
enquiries, whether
the property therein
alluded to may
be returned to the
claimant Ramjappa
Lingappa Hegde of
Siddapur

Siddapur Taluk
who has claimed it as
~~to~~ his own.
2. Appl early reply
is requested.

B. O.
C.
9-1-99
Secy:

BO.
7/1/99

Ena
7/1

rec'd
note
9/1/99

9975

189 8-99

From The District Magistrate Shimoga

OFFICE OF THE DEWAN OF MYSORE 9 FEB. 99 677

SECTION — To The Secretary to the Govt of Mysore Rev and Agl Department

FILE No. 76[illegible] of

SERIAL No. 7 Dated 6th February 1899

Despatched

Received

General No. 603

No. 43

1. Record in criminal case No. 37 of 1898 on the file of the 1st class Magistrate of Sirsi

1. Do in criminal case No. 19 of 1898 on the file of the 2nd class Magte of Siddapur.

Enclosure No. 2 Files of records

With reference to his docket No 8018 of 1895 of the 9th ultimo, states that the property claimed by Manjappa Ganappa Heggade of Siddapur may be returned to him.

Issd
9-2-99

Sent with references.
Dated 10-2-99
11 a.m.

Refs
9/2

1898-99.

From.

The District Magistrate
Shimoga.

To The Secretary to the Government
of Mysore, General and
Rev: Departments.

Dated 6th February 1899.

No. 603/43 Encl: 2 files of records.

Secretary's docket No. 8018/1895 of the
9th ultimo.

In returning herewith the marginally noted records received with the above, has the honour to state that the property claimed by Manjappa Ganappa Heggade of Siddapur may be returned to him as the Amildar of Sorab reports that there is no person in his Taluk putting forward any claim for the said property.

For District Magistrate
Shimoga

Ind 2

This is only a reminder to the reminder sent from this office.

ma
27/2
28

File the Residency letter has been replied to.

G. AK 28/2

OFFICE OF THE
6929
FEB 99
MAN OF MYSORE

J988

From The Deputy-Magistrate
Shimoga.

To The Secretary to the
Govt of Mysore & Ct
Rev Department

Dated 11th February 1899.

Despatched

Received

SECTION — General No. 22
No. 26
FILE NO. 74 07 38 98
Enclosure No.
Serial No. 8

With reference to his docket No. 9281 x J 1146 of the 8th instant, enquiring whether the property seized in the house of Subraya bin Sivappa of Sorab Talu has been replied to in this office docket No. 603/43 dated the 6th instant.

x Reminder-Destroyed.

Ind
14.2.99
Refs
Ind
17/2

References put up.
Enquiries be furnished.

27-2-99.

Ind. 27-2-99

1898-99

From

The District Magistrate
Shimoga.

To The Secretary to the Govt.
of Mysore, General and
Rev. Department.

Dated 11th February 1899.

No. 622/46

His docket No. 9281/J.1146, of the 8th instant, drawing attention to No. 8018/J.895 of the 9th ultimo.

In reply, has the honour to state that the matter has been replied to, in this office docket No. 603/43, dated the 6th instant.

H. Macpherson
District Magistrate
Shimoga

Draft subd for a Memo

23

27

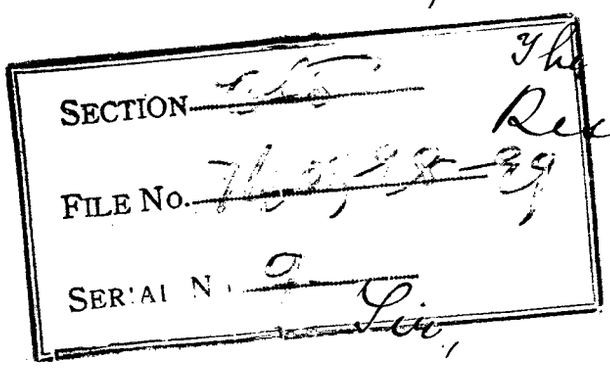
G 421.

J 1177 Dated 13/2/99.

Encl 2 Pets

To,

The 1st Asst to the Resident in Mysore.



With reference to your letter no 10 dated the 4th ultimo, I am directed to state that the District magte of Shimoga, reports that the property claimed by Ramappa Gangappa Heggade of Siddapura Taluk, may be returned to him as none in the Sorab Taluk, has claimed the same.

2. The records received with your letter under reply are herewith returned.

I have &c

11/2/99

for Secy:

11/2

8. From the Dt Magte Shimoga
Dy. no: 6929. no: 622/46 of 11/2/99.

States that Docket no: 9281/1146 of the 8th ultimo
has been replied to in this office
docket no: 603/43 of 8th ~~ultimo~~ instant.

9. To the 1st Asst. to the Resident in Mysore
No: 9421/1177 of 13/2/99

States that the Dt Magte of Shimoga
reports that the property claimed
by Manjappa Gundappa maybe
returned to him as none in Soraba
Taluk has claimed the Same.

(indexed) B. Venkatasubbiah